

MAINE STATE LEGISLATURE

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OF THE
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Chapter 148.

Proceedings in Court in Criminal Cases.

Section 34. State Jurisdiction after Federal Court Disposition.

Bail. Arraignment and Trial of Prisoners.

Sec. 15. Facts tried, challenges allowed, as in civil cases.—Issues of fact joined on indictments shall be tried by a jury drawn and returned in the same manner, and challenges shall be allowed to the prosecuting officer and the accused, as in civil cases, except that, in cases of felonies not punishable by imprisonment for life, 8 peremptory challenges shall be allowed each, to the prosecuting officer and the accused; but no member of a grand jury finding an indictment shall sit on the trial thereof, if challenged therefor by the accused. (R. S. c. 135, § 15. 1955, c. 119.)

Effect of amendment.—The 1955 amendment inserted the provision for eight peremptory challenges in cases of felonies not punishable by life imprisonment.

Witnesses.

Sec. 22. Respondent may testify; not compelled to incriminate himself; failure to testify; husband or wife may testify.

Competency of an accused to testify rests upon this section and depends upon compliance with the words "at his own request but not otherwise." *State v. Papalos*, 150 Me. 370, 113 A. (2d) 624.

This section is applicable in the joint trial of co-indictees. Each may be a witness for himself, for a co-indictee, or for the State, provided his testimony is given at his own request, but not otherwise.

State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

There must be no element of compulsion to make the accused take the witness stand. He must not be forced to elect whether he will testify. *State v. Papalos*, 150 Me. 370, 113 A. (2d) 624.

Applied in *State v. Dipietrantonio*, 153 Me. 41, 122 A. (2d) 414.

Proceedings after Verdict.

Sec. 29. Sentence imposed upon conviction; proviso; form of recognizance; stay of execution of sentence had after commitment.

Cited in *State v. DeBery*, 150 Me. 28, 103 A. (2d) 523.

Sec. 30. Appeal when punishment is imprisonment for life and in certain other criminal cases.

But law court has no jurisdiction of motion in first instance.

In a prosecution for murder, where there was a motion to the law court for new trial, which was not directed to or passed upon by the presiding justice, the motion was not before the law court. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

A motion for a new trial is not, in felony cases, a waiver of the exception taken to the refusal of the presiding justice to direct a verdict. *State v. Lumbert*, 152 Me. 131, 124 A. (2d) 746.

Quoted in *Palleria v. Farrin Bros. & Smith*, 153 Me. 423, 140 A. (2d) 716.

Sec. 32. Error in sentence.

Applied in *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

Sec. 33. Detention at state prison of certain prisoners.—When a verdict of guilty is rendered against any person for an offense punishable by imprisonment in the state prison, and such person is committed to jail pending de-

cision by the supreme judicial court on exceptions, report, motion in arrest of judgment, writ of error, appeal or otherwise, or is committed to jail to await action of a grand jury after a finding of probable cause, the sheriff of the county in which such person is committed to jail may certify, in writing, to any justice of the superior or supreme judicial court, in term time or in vacation, that in his opinion such person is dangerous and liable to attempt to escape from such jail; thereupon such justice may order, after hearing, that said person be transferred and committed to the state prison for safekeeping to await the final decision from the supreme judicial court. The county committing such person to the state prison for safekeeping shall be liable to the state for each such person, a proportional amount of the over-all inmate per capita cost per day based on previous year. (R. S. c. 135, § 33. 1955, c. 247.)

Effect of amendment.—The 1955 amendment rewrote the last sentence.

State Jurisdiction after Federal Court Disposition.

Sec. 34. Court action after federal court has acted.—Whenever any federal court finds that a prisoner in any penal institution in this state has been deprived of any of the rights guaranteed to him by the constitution of the United States before, at or after his trial, so that the judgment or sentence or both are erroneous and said court holds the case on its docket pending corrective action by the proper state official, the attorney general may act as follows. He may file a petition in the superior court of the county where the prisoner was tried and convicted in term time or with any justice of said court in vacation, setting forth the petition of the prisoner to the federal court and the decision of that court, and the superior court of conviction or any justice thereof in vacation shall then recall the judgment and sentence held erroneous and order it stricken from the records of said court and shall set the prisoner down for trial if in term time or bind him over to the next criminal term in said county if in vacation, after setting his bail. If the sentence only is erroneous, the superior court of the county of conviction in term time or any justice thereof in vacation, on presentation of the attorney general's petition as aforesaid, shall recall the erroneous sentence and order it stricken from the records and shall in term time or in vacation sentence the prisoner anew in accordance with the indictment against said prisoner. (1955, c. 121.)

Chapter 149.

Sentence. Probation Officers. Parole. Pardons.

Fugitives from Justice.

Sentences and Imposition.

Sec. 1. No person punished until convicted; costs.—No person shall be punished for an offense until convicted thereof in a court having jurisdiction of the person and case. In all cases where a fine is imposed he may be sentenced to pay the costs of prosecution, except before a municipal or trial justice court in which courts he may be sentenced to pay a fine sufficient to cover said costs as provided by section 2-A of chapter 146; and except before trial justice and municipal courts, for violations of the provisions of sections 66, 68, 84 and 89 of chapter 61, and of sections 145 to 152, inclusive, of chapter 100, he shall be sentenced to pay such costs. (R. S. c. 136, § 1. 1957, c. 334, § 14; c. 387, § 19; c. 429, § 87.)

Effect of amendments.—The first 1957 end of the first clause of the present amendment inserted the exception at the second sentence and inserted the words "ex-